

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
Tampa Division**

**UNITED STATES OF AMERICA**

**v.**

**SAMI AMIN AL-ARIAN, *et al.***

**Defendants.**

)  
)  
)  
)  
)  
)  
)

**Case No. 8:03-CR-77-T-30-TBM  
The Honorable James S. Moody, Jr.**

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED SET OF JURY INSTRUCTIONS**

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Judge comments and questions not evidence)

Nothing I say is evidence. If I comment on the evidence during my instructions, do not accept my statements in place of your recollection. It is your recollection that governs.

Also, do not draw any inference from any of my rulings. The rulings I have made during trial are not any indication of my views. Indeed, I have no opinion as to the facts of this case, and you should not seek to find an opinion in my rulings.

Further, do not concern yourself with what was said at sidebar conferences or during my discussions with counsel. Those discussions related to rulings of law and not to matters of fact.

Finally, at times I may have directed a witness to be responsive to questions or to keep his or her voice up. At times I may have questioned a witness myself. Any questions that I asked, or instructions that I gave, were intended only to clarify the presentation of evidence and to bring out something that I thought was unclear. You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any witness or any party in the case, by reason of any comment, question or instruction of mine. Nor should you infer that I have any views as to the credibility of any witness, as to the weight of the evidence, or as to how you should decide any issue that is before you. That is entirely your role.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7790-91.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Function of judge regarding questions)

I have previously told you that it is my function to explain to you the rules of law that govern your deliberations. These rules of law have developed in the legal opinions of judges over hundreds of years and frequently are expressed in language that is no longer in general use. Also, many of the legal principles expressed in these instructions are complex and may be difficult to understand even for lawyers and judges.

For these reasons, it is not only my function to explain the law to you, but it is my duty to explain it in such a way that each of you understands the legal principles which govern your deliberations and each of you has the same understanding. If any one of the jurors does not understand any of the legal principles I have directed the jury to apply or if the jurors do not unanimously agree as to the meaning of any of the principles, the Court has the duty and obligation to give you further instructions in language that each of you does understand and in language so that each of you has the same understanding and ascribes the same meaning to the instructions which must govern your deliberations.

Accordingly, each of you has the responsibility to advise the Court should you not understand the instructions you have been directed to apply so that the Court can formulate additional instructions in language that each of you will understand.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Mere Presence)

The mere presence of a defendant where a crime is being committed, even coupled with knowledge by a defendant that a crime is being committed, or the mere negative acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish the defendant's guilt. It may be foolish to stand by when others are acting illegally, or to associate with those who have committed a crime. Such conduct or association, however, without more, does not establish guilt.

**AUTHORITIES:**

*United States v. Cirillo*, 499 F.2d 872, 888 (2d Cir.), *cert denied*, 419 U.S. 1056 (1974);  
*United States v. Williams*, 503 F.2d 50, 54 (6<sup>th</sup> Cir. 1974), *abrogated on other grounds*,  
*United States v. Crayton*, 357 F.3d 560 (2004).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Sympathy)

The mere knowledge of a defendant that others had formed a conspiracy to violate the law and even his or her full sympathy with the object of that conspiracy, without more, would not make him or her a conspirator. There must be proof beyond a reasonable doubt of his or her active participation in the conspiracy charged.

**AUTHORITIES:**

*See United States v. Svoboda*, 347 F.3d 471, 479 (2d Cir. 2003), *petition for cert. filed*, 72 U.S.L.W. 3673 (U.S. Apr. 14, 2004) (No. 03-1438); *United States v. Ceballos*, 340 F.3d 115, 123 (2d Cir. 2003).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Impermissible to infer participation from association)

You may not infer that the defendant was guilty of participating in criminal conduct from the fact that he or she associated with other people who were guilty of wrongdoing.

**AUTHORITIES:**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7858 (modified); 1 L. Sand, *et al.*, MODERN FEDERAL JURY INSTRUCTIONS at 6-14 (2003)(modified).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Presence at meetings)

Merely because a defendant was present at meetings with persons who conspired and may have been aware of their conspiracy does not make such defendant a conspirator.

**AUTHORITIES:**

*United States v. Williams*, 503 F.2d 50, 54 (6<sup>th</sup> Cir. 1974), *abrogated on other grounds*, *United States v. Crayton*, 357 F.3d 560 (2004); *United States v. Basurto*, 497 F.2d 781, 793 (9<sup>th</sup> Cir. 1974); *Roberts v. United States*, 416 F.2d 1216 (5<sup>th</sup> Cir. 1969).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Knowingly entered into agreement)

Merely because the defendant was associated with a criminal venture and engaged in affirmative conduct to aid in the success of the venture with knowledge that his or her acts would assist its perpetration does not make the defendant a conspirator in the absence of proof beyond a reasonable doubt that he or she knowingly and intentionally entered into a conspiratorial agreement.

**AUTHORITIES:**

*United States v. Smith*, 832 F.2d 1167, 1171 (9<sup>th</sup> Cir. 1987), *United States v. Cowart*, 595 F.2d 1023, 1031 (5<sup>th</sup> Cir. 1979).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_



**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Membership own acts)

As a matter of law, membership in a conspiracy depends on the defendant's own acts and words. Co-conspirator statements determined to be admissible by the trial judge may be considered by the jury to decide what the defendant did and said, or to help understand the defendant's acts and words, but it is only the defendant's own acts and words upon which the jury can rely for evidence that the defendant was a member of a conspiracy.

**AUTHORITIES**

*United States v. Goines*, 988 F.2d 750, 772-773 (7<sup>th</sup> Cir.), *cert. denied*, 510 U.S. 887 (1993), *citing United States v. Martinez de Ortiz*, 907 F.2d 629, 635 (7<sup>th</sup> Cir. 1990) (*en banc*), *cert. denied*, 498 U.S. 1029 (1991) and *United States v. Torres*, 965 F.2d 303, 308 (7<sup>th</sup> Cir. 1991), *cert. denied*, 506 U.S. 883 (1992).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(More than suspicion)

In order for a jury to convict a defendant for being part of a conspiratorial agreement, there must be more than suspicion, more than knowledge, acquiescence, carelessness, indifference, or lack of concern.

**AUTHORITIES**

*United States v. Townsend*, 924 F.2d 1385, 1390-95 (7<sup>th</sup> Cir. 1991).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Participation by own words)

In order to prove a defendant guilty beyond a reasonable doubt of conspiracy, the government must prove an individual defendant's participation in such unlawful conspiracy by his or her own words and actions not those of other alleged participants.

**AUTHORITIES**

*United States v. Corallo*, 413 F.2d 1306, 1324 (2d Cir.), *cert denied*, 396 U.S. 958 (1969);  
*United States v. Cardi*, 478 F.2d 1362, 1368 (7<sup>th</sup> Cir.), *cert. denied*, 414 U.S. 1001 (1973);  
*United States v. Fellabaum*, 408 F.2d 220, 226 (7<sup>th</sup> Cir.), *cert. denied*, 396 U.S. 858 (1969).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Know without joining)

One may know of and intentionally assist a substantive crime without joining a conspiracy to commit the crime.

**AUTHORITIES**

*United States v. Townsend*, 924 F.2d 1385, 1390-95 (7<sup>th</sup> Cir. 1991), citing *United States v. Giovannetti*, 919 F.2d 1223 (7<sup>th</sup> Cir. 1990), and *United States v. Falcone*, 311 U.S. 205 (1940).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Government as party)

The fact that the government is a party and the prosecution is brought in the name of the United States does not entitle the government or its witnesses to any greater consideration than that accorded to any other party. By the same token, you must give it no less consideration. The government and each of the defendants stand on equal footing before you.

Your verdict must be based solely on the evidence or the lack of evidence. In considering the evidence presented, however, you may not consider whether the defendant failed to offer evidence. A defendant is never required to offer evidence in support of his or her innocence.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7785 (modified).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Personalities of lawyers)

The personalities and the conduct of counsel are not in any way an issue. If you formed opinions of any kind as to any of the lawyers in the case, favorable or unfavorable, whether you approved or disapproved of their behavior, those opinions should not enter into your deliberations.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7785.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Voir dire binding)

In determining the facts, the jury is reminded that before each member was accepted and sworn to act as a juror, he or she was asked questions concerning competency, qualifications, fairness and freedom from prejudice and bias. On the faith of those answers, the juror was accepted by the parties. Therefore, those answers are as binding on each of the jurors now as they were then, and should remain so, until the jury is discharged from consideration of this case.

**AUTHORITIES**

*See* 1 L. Sand, *et al.*, MODERN FEDERAL JURY Instructions at 2-14 (2003) *citing United States v. Umans*, 368 F.2d 725, (2<sup>nd</sup> Cir. 1966), *cert. granted*, 386 U.S. 940 (1967); *and cert. dismissed*, 389 U.S. 80 (1967).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Voir dire oath)

I know you will try the issues that have been presented to you according to the oath which you have taken as jurors in which you promised that you would well and truly try the issues joined in this case and render a true verdict. Your oath also includes your commitment to follow the instructions of this Court. If you follow your oath, and try the issue without fear or prejudice or bias or sympathy, you will arrive at a true and just verdict.

**AUTHORITIES**

*See* 1 L. Sand, *et al.*, MODERN FEDERAL JURY Instructions at 2-14 (2003) (modified); *United States v. Umans*, 368 F.2d 725, (2<sup>nd</sup> Cir. 1966), *cert. granted*, 386 U.S. 940 (1967); *and cert. dismissed*, 389 U.S. 80 (1967), 368 F.2d 725 (2d Cir. 1966).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_



**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Not on trial for any conduct not charged)

The defendants are not on trial for any act or conduct not alleged in the Indictment.

**AUTHORITIES**

1 Devitt & Blackmar, FEDERAL JURY PRACTICE AND INSTRUCTIONS (CRIMINAL) § 12.09 (5<sup>th</sup> ed. 2000).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Hearings outside presence of jury)

You should not be prejudiced in any way, or draw any unfavorable inference against any party, because the lawyers asked for a hearing out of the presence of the jury. It was not that they were trying to conceal anything from you, or that I was. It was merely that we had something to discuss. If we could anticipate problems in advance, we did that; and rulings were made out of your hearing so it would not be necessary for you to be asked to disregard evidence. If we can, we try to decide those matters out of your hearing so that if they are not proper you do not hear them at all.

**AUTHORITIES**

*United States v. Mercado*, Case No. 93-CR-116 (E.D. Wis. 1994); *Jury Instructions in Criminal Antitrust Cases* (ABA Section of Antitrust Law), *citing* jury instructions in *United States v. United States Gypsum Co.*, 383 F. Supp. 462 (W.D. Pa. 1974), *convictions reversed and remanded*, 550 F.2d 115 (3d Cir. 1977), *aff'd* 438 U.S. 422 (1978).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Reasonable doubt)

I have said that the government has the burden of proving its case beyond a reasonable doubt.

The question naturally is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt which would cause a reasonable person to hesitate to act in a manner of importance in his or her personal life. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. And, it is not sympathy.

It is a strict and heavy burden. It is not sufficient for the government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond a reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

In a criminal case, the burden is, at all times, upon the government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to the defendants, which means that it is always the government's burden to prove each of

the elements of the crimes charged beyond a reasonable doubt for each of the defendants charged.

If, after fair and impartial consideration of all of the evidence, you have a reasonable doubt concerning the guilt of a defendant you are considering with respect to a particular charge, it is your duty to acquit the defendant of that charge. On the other hand, if, after fair and impartial consideration of all the evidence, you are satisfied of the defendant's guilt of a particular charge beyond a reasonable doubt, you should vote to convict.

## **AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7809-11 (modified); *United States v. Cleveland*, 106 F.3d 1056, 1062-63 (1<sup>st</sup> Cir. 1997), *aff'd sub nom. Muscarello v. United States*, 524 U.S. 125 (1998), *recognized as abrogated on other grounds by Brache v. United States*, 165 F.3d 99 (1<sup>st</sup> Cir. 1999).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Presumption of innocence)

Although the defendants have been indicted, you must remember that the indictment is only an accusation. It is not evidence. The defendants have pleaded not guilty to the indictment. In so doing, the defendants have denied the allegations in the indictment against them.

As a result of each of the defendants' pleas of not guilty, the burden is on the prosecution to prove the guilt of each defendant individually beyond a reasonable doubt. This burden never shifts to the defendants for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence. The law presumes the defendants to be innocent of all the charges against them. I therefore instruct you that you are to presume that each of the defendants is innocent throughout your deliberations until such time, if ever, you, as a jury, are satisfied that the government has proven a defendant guilty beyond a reasonable doubt.

Each defendant begins the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit a defendant unless you, as jurors, are unanimously convinced beyond a reasonable doubt of that defendant's guilt, after a careful and impartial consideration of all of the evidence in this case. If the government fails to sustain its burden, you must find the defendant you are considering not guilty.

This presumption was with each of the defendants when the trial began and remains with each of them even now as I speak to you and will continue with each of the defendants into your deliberations unless and until you are convinced that the government has proven the guilt of the defendant you are considering beyond a reasonable doubt.

## **AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7809-9.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Burden always on government)

You should keep in mind that the burden of proof is always on the government and because the burden is always on the government the defendants are not required to call any witnesses or offer any evidence since they are presumed to be innocent.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7806 (modified).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Evidence susceptible to two interpretations)

You are instructed that if the evidence which you have heard is susceptible of two interpretations, each of which appears to be reasonable, and only one of which points to the guilt of the defendant, it is your duty to adopt the interpretation which will support the defendant's innocence and reject that which points to his or her guilt.

**AUTHORITIES**

*United States v. Zumpano*, 436 F.2d 535, 538 (9<sup>th</sup> Cir. 1970). *See also United States v. Barclay*, 452 F.2d 930, 932 (8th Cir. 1971), *Cf. United States v. Malik*, 16 F.3d 45, 50 (2d Cir.). *cert. denied*, 513 U.S. 968 (1994); *United States v. Bronston*, 453 F.2d 555, 558 n.2 (2d Cir. 1971), *rev'd on other grounds*, 409 U.S. 352 (1973).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_



**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Evidence equally consistent with innocence)

If the evidence as to an element of a crime is equally consistent with the defendant's theory of innocence as with the government's theory of guilt, that evidence necessarily fails to establish guilt beyond a reasonable doubt.

**AUTHORITIES**

*United States v. Harris*, 942 F.2d 1125, 1129 (7<sup>th</sup> Cir. 1991); *United States v. Delay*, 440 F.2d 566, 568, (7<sup>th</sup> Cir. 1971), *United States v. Martinez-Sandoval*, 2003 WL 1442454 at \*6 (S.D.N.Y. Mar. 6, 2003); *United States v. Cassesse*, 290 F. Supp. 2d 443, 456 (S.D.N.Y. 2003).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Suspicion)

Suspicion, even if strong, is no substitute for proof. Before a defendant can be proven a conspirator there must be proof beyond a reasonable doubt of his or her connection with a conspiracy. Guilt by association cannot be the necessary proof.

**AUTHORITIES**

*United States v. Salameh*, 152 F.3d 88, 117 (2d Cir. 1998), *cert. denied*, 526 U.S. 1028 (1999); *United States v. Kehm*, 799 F.2d 354, 363 (7<sup>th</sup> Cir. 1986); *Glover v. United States*, 306 F.2d 594, 595 (10<sup>th</sup> Cir. 1962); *Ong Way Jong v. United States*, 245 F.2d 392, 396 (9<sup>th</sup> Cir. 1957).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(All parties equal)

I remind you that in reaching your verdict, you are to perform your duty of finding the facts without bias or prejudice as to any party. You must remember that all parties stand as equals before a jury in the courts of the United States. You must disregard any feelings you may have about any of the defendants' race, ethnicity, religion, national origin, sex, age or political beliefs. The issues in this case are not about where any defendant is from, about any defendant's gender, race, or ethnicity, or about any defendant's radical political orientation, but rather whether the government has proven the charges in the indictment beyond a reasonable doubt. It would also be improper for you to allow any feelings you might have about the nature of the crimes charged to interfere with your decision making process.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7784-85 (modified).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Circumstantial evidence may create reasonable doubt)

Circumstantial evidence may also permit the inference the defendant is not guilty of the offense. That is, circumstantial evidence alone may be sufficient to create in your minds a reasonable doubt of the defendant's guilt, and if it does so, then you must find him or her not guilty.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Speculation)

Speculation cannot substitute for evidence.

**AUTHORITIES**

*Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 513 F. Supp. 1100, 1205 n.45 (D.C. Pa. 1981), *aff'd in part and rev'd in part on other grounds*, 723 F.2d 238 (3d Cir. 1983), *and rev'd on other grounds* 475 U.S. 574 (1986).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Inference defined)

During the trial you have heard the attorneys use the term “inference,” and in their arguments they have asked you to infer, on the basis of your reason, experience and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a fact exists on the basis of another fact which you know exists.

There are times when different inferences may be drawn from facts whether proved by direct or circumstantial evidence. The government asks you to draw one set of inferences, while the defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion which you, the jury, are permitted to draw – but not required to draw – from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience.

Here again, let me remind you that, whether based upon direct or circumstantial evidence, or upon the logical, reasonable inferences drawn from such evidence, you must be satisfied of the guilt of the defendant beyond a reasonable doubt before you may convict.

## **AUTHORITIES**

1 L. Sand, *et al.*, MODERN FEDERAL JURY Instructions at 6-3 (2003).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Draw no inference from objections)

You should draw no inference or conclusion for or against any party by reason of lawyers' objections or my rulings on such objections. Counsel have not only the right but the duty to make legal objections when they think that such objections are appropriate. You should not be swayed against the government or the defendants simply because counsel for either side has chosen to make an objection.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7789.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_



**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Draw no inference from reprimands)

It is my function to cut off counsel from questioning, to strike remarks, and to reprimand counsel when I think it is necessary. But you should draw no inference from that. It is irrelevant whether you like the lawyer or whether you believe I like a lawyer. The issue before you is not which attorney is more likable – the issue is whether the government has sustained its burden of proof.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7789.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Cooperation among counsel)

You may have also noticed throughout the trial that counsel for various defendants have consulted with each other and have divided the work of the trial in an effort to facilitate their presentation and to avoid duplication. The fact that defense counsel have consulted and cooperated with each other in the conduct of their defense is not to be considered by you as having any significance with respect to the issues in the case.

The issue of each defendant's guilt is personal, and you must make a separate determination as to whether or not each defendant's guilt has been proven beyond a reasonable doubt. In making that judgment, you are to disregard entirely the circumstances that counsel for various defendants have worked together during the trial.

Indeed, especially in a case of this length, it would be unusual and wasteful of time and effort if counsel did not share the burdens of the defense.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7790.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Indictment is not evidence)

This case, as you know, began with an indictment returned by a Grand Jury. An indictment is a paper that is returned by a Grand Jury which has heard but one side of the case generally, and by bringing the indictment they have in substance said that from all of what they had before them, unexplained by anybody and uncontradicted, on the basis of what they had heard, they would think the defendant ought to be brought to trial.

I remind you that the indictment in this case is not evidence. It merely describes the charges made against the defendants. It is an accusation. It is no evidence whatsoever and you cannot consider it at all on the question of guilt or innocence of any of the defendants.

**AUTHORITIES**

*Jury Instructions in Criminal Antitrust Cases*, (ABA Section of Antitrust Law, 1978), *citing* jury instructions in *United States v. Boston & Maine Railroad*, 225 F. Supp. 577 (D. Mass. 1963), *vacated on other grounds*, 380 U.S. 157 (1965); *United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7812-13.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Do not consider political opinions)

You have heard evidence that for many years Sami Al-Arian has supported unpopular people and causes and regularly aligned himself with the cause of Palestinians and the liberation of Palestine. Sami Al-Arian, like anyone else, has the constitutional right to express his political and religious opinions, and your agreement or disagreement with him on such issues can play no part in your decision.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Arrest)

You have also heard evidence that the defendants were arrested. The fact that a person is arrested is not evidence that a person is guilty of any crime, and you may not consider it as any evidence of guilt.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7814.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Bias)

How much you choose to believe a witness may be influenced by the witness' bias. Does the witness have a relationship with the government or the defendant which may affect how he or she testified? Does the witness have some incentive, loyalty or motive that might cause him or her to shade the truth; or, does the witness have some bias, prejudice or hostility that may have caused the witness – consciously or not – to give you something other than a completely accurate account of the facts he or she testified to? In connection with your evaluation of the credibility of the witnesses, you should specifically consider evidence of resentment or anger which any witness may have toward the defendant. Evidence that a witness is biased, prejudiced or hostile toward the defendant requires you to view that witness' testimony with caution, to weigh it with care, and subject it to close and searching scrutiny.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7796.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Uncontradicted and unimpeached testimony)

You are not obligated to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness' bearing and demeanor, or because of the inherent improbability of his or her testimony, or for other reasons sufficient to you, such testimony is not worthy of belief.

**AUTHORITIES**

*Dyer v. MacDougall*, 201 F.2d 265, 267 (2d Cir. 1952)(Hand, J.); *United States v. Jones*, 880 F.2d 55, 66 n.14 (8<sup>th</sup> Cir. 1989); *United States v. Butcher*, 557 F.2d 666, 668 n.5 (9<sup>th</sup> Cir. 1977).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Volunteered prejudicial testimony)

A witness who persistently volunteers statements prejudicial to a defendant when such responses are not called for by the questions which are asked is behaving in a manner that is offensive to the fair administration of justice. You may consider this tendency of the witness in evaluating his possible bias and in deciding the credibility of that witness.

**AUTHORITIES**

*Cf. United States v. Andrea*, 538 F.2d 1255 (6<sup>th</sup> Cir. 1976).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_



**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Prior statements)

On some occasions the court has admitted testimony of a witness concerning his or her own prior statements. These prior statements were not admitted for their truth, but merely for the fact that they had been made. These prior statements would have been inadmissible as hearsay if they were offered for their truth.

**AUTHORITIES**

*United States v. Check*, 582 F.2d 668, 677 (2d Cir. 1978).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Out-of-court statements)

Should the jury hear evidence that on some occasion prior to this trial some witness made an out-of-court statement which is consistent with the testimony given by this witness on this trial, the jury cannot consider the out-of-court statement for its truth.

**AUTHORITIES**

*Tome v. United States*, 513 U.S. 150 (1995); *United States v. Check*, 582 F.2d 668, 677 (2d Cir. 1978).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Law enforcement officers as witnesses)

You have heard the testimony of law enforcement officers. The fact that a witness is employed by the United States government does not mean that his or her testimony necessarily deserves more or less weight than that of an ordinary witness.

In fact, the point is that he or she is an ordinary witness. You should consider the same questions of bias, stake in the outcome, behavior while testifying, strength of recollection, experience, and logical soundness of his or her testimony that you consider with any other witness.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witness, and exactly what weight, if any, to give it.

**AUTHORITIES**

*Bush v. United States*, 375 F.2d 602 (D.C. Cir. 1967). See *United States v. Lawes*, 292 F.3d 123 (2d Cir. 2002).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Defendant may rely on cross-examination)

The burden of proving a defendant guilty beyond a reasonable doubt rests upon the prosecution. This burden never shifts throughout the trial. The law does not require a defendant to prove his or her innocence or to produce any evidence. The defendant may rely upon evidence brought out on cross-examination of witnesses for the prosecution. If the prosecutor fails to prove a defendant guilty beyond a reasonable doubt, the jury must acquit him or her.

**AUTHORITIES**

*United States v. Arredo-Sarmiento*, 545 F.2d 785, 794 (2d Cir. 1976), *cert. denied*, 430 U.S. 917 (1977); *United States v. Brumel-Alvarez*, 991 F.2d 1452, 1463 (9<sup>th</sup> Cir. 1993). *See also* *United States v. Eisen*, 974 F.2d 246, 265 (2d Cir. 1992), *cert. denied*, 507 U.S. 1029 (1993); *Dupuy v. Cain*, 201 F.3d 582, 586 (5<sup>th</sup> Cir. 2000), *cert. denied*, 531 U.S. 1128 (2001).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Weaker evidence when stronger is available)

If a party offers weaker and less satisfactory evidence when stronger and more satisfactory evidence could have been produced, you may but are not required to consider this fact in your deliberations.

You must remember, however, that a defendant is not obliged to produce any evidence or to call any witnesses.

**AUTHORITIES**

1A Devitt, Blackmar & Wolff, 1A *Federal Jury Practice and Instructions* § 14.14 (5<sup>th</sup> ed. 2000); *United States v. Mercado*, Case No. 93-CR-116 (E.D. Wis. 1994).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Intro to defendants theory of the case)

The burden of proof in a criminal case is always on the government. When you are instructed by the court on the defendant's position or theory of defense, this does not mean that the defendant must prove his position or theory. The government has the burden of disproving the theory of defense. If, after considering all of the evidence in the case, the defendant's theory causes you to have a reasonable doubt of a defendant's guilt, then you must find that defendant not guilty.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Transcripts)

The parties have been permitted to hand out typed transcripts which each of them prepared containing their respective interpretations of what appears on the audio and video recordings which have been received in evidence. These were given to you as an aid or guide to assist you in watching and listening to the tapes which are in evidence. However, the transcripts are not in and of themselves evidence. Therefore, when the recordings were played, I advised you to watch and listen very carefully to the recordings themselves. You alone should make your own interpretation of what appears on the recordings based on what you heard. If you think you saw or heard something differently than what appeared on the transcript, then what you saw or heard is controlling.

The words that were spoken at the time the conversations were recorded are the real evidence. However, because some of the words are spoken in Arabic, transcripts of English translations were provided for you. I doubt whether any of you speak Arabic, and that's the only reason why we have these translations. Otherwise, the tapes alone would be in evidence. The tapes are the evidence, and they were played so that you could see and hear the gestures, intonations, hesitations and other nuances. The transcripts were provided in order to assist you to find out what the tapes say. The transcripts are an aid, the audio and videotapes are the evidence.

Whether a transcript is an accurate translation, in whole or in part, is for you to decide. In considering whether a transcript accurately describes the meaning of a conversation, you should consider the testimony presented to you regarding how, and by whom, the transcript was

made. You may consider the knowledge, training, and experience of the translator, as well as the nature of the conversation and the reasonableness of the translation in light of all the evidence in the case. [You should not rely in any way on any knowledge you may have of the language spoken on the recording.] Your consideration of the transcripts should be based on the evidence introduced in the trial.

You must consider all the evidence received in the case as a whole and not place undue emphasis on the transcripts. The transcripts are evidence subject to objections. The transcripts or portions of the transcripts may have to be evaluated by you for accuracy, and you may accept, reject, or partially accept the accuracy of any transcript.

Let me say again, you, the jury, are the sole judges of the facts.

## **AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7793. *United States v. Bahadar*, 954 F.2d 821, 830-31 (2d Cir.), *cert. denied*, 506 U.S. 850 (1992); *United States v. Franco*, 136 F.3d 622, 626-627 (9<sup>th</sup> Cir. 1998); 7<sup>th</sup> CIRCUIT FEDERAL JURY INSTRUCTIONS – CRIMINAL 3.18 (1999).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_



**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Credibility)

You have had the opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

It must be clear to you by now that you are being called upon to determine what the government has proven beyond a reasonable doubt in connection with each count of the indictment. You will now have to decide whether the government has met its burden of proving beyond a reasonable doubt the guilt of each individual defendant in connection with each separate crime charged, and an important part of that decision will involve making judgments about the testimony of the witnesses you have listened to and observed. In making those judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you to decide the truth and importance of each witness' testimony.

A witness could believe that he or she was being truthful, yet be mistaken and not able to recall facts accurately. Also, a witness could take the oath and still intentionally testify falsely. How do you determine whether the witness told the truth and whether he or she knew what they were talking about? It is really just a matter of using your common sense, your good judgment and your experience.

First of all, consider how good an opportunity the witness had to observe or hear what he or she testified about. How did the witness' testimony impress you? Was the witness candid, frank and forthright? Or, did the witness seem as if he or she was hiding something, being

evasive or suspect in some way? Consider the witness' demeanor, his or her manner of testifying. How did the way the witness testified on direct examination compare with how the witness testified on cross-examination? Was the witness consistent in his or her testimony, or did the witness contradict him or herself? Did the witness appear to know what he or she was talking about and did the witness strike you as someone who was trying to report his or her knowledge accurately? How does the witness' testimony compare with other proof in the case? Is it corroborated or is it contradicted by other evidence?

In other words, what you must try to do in deciding credibility is to size a person up in light of his or her demeanor, the explanations given, and in light of all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward and accurate in his or her recollection. In deciding the question of credibility, remember that you should use your common sense, your good judgment, and your experience.

It is for you, the jury, and for you alone, not the lawyers, not any of the witnesses, and not me as the judge, to decide the credibility of witnesses who appeared here and the weight which their testimony deserves.

## **AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7794-96 (modified); 1 L. Sand, *et al.*, MODERN FEDERAL JURY INSTRUCTIONS at 7-3, 7-4 (2003)(modified).

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

**DEFENDANT SAMI AMIN AL-ARIAN'S FIRST  
PROPOSED JURY INSTRUCTION NO. \_\_\_\_\_**

(Credibility Objections)

You have had the opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

It must be clear to you by now that you are being called upon to resolve various factual issues under the counts of the indictment, in the face of the very different pictures painted by the government and the defense which cannot be reconciled. (Comment: Jurors do not have to resolve factual issues. They are required only to determine what has been proved by the government beyond a reasonable doubt. The defendant does not necessarily paint any picture. The defendant is not obligated to present any evidence. This is a statement by the judge that he or she has already determined that there is evidence that cannot be reconciled. It is the jury's job (not the judge's) to determine whether or not evidence can be reconciled.) You will now have to decide where the truth lies and an important part of that decision will involve making judgments about the testimony of the witnesses you have listened to and observed. (Comment: The jury does not decide where "the truth lies." The jury decides what, if anything, the government has proven beyond a reasonable doubt.) In making those judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you decide the truth and importance of each witness' testimony.

You must now consider whether the witnesses were both truthful and accurate.  
(Comment: This is confusing. Truth and accuracy are commonly thought of as being the same.)

A witness could believe that he or she was being truthful, yet be mistaken and not able to recall facts accurately. Also, a witness could take the oath and still intentionally testify falsely. How do you determine whether the witness told the truth and whether he or she knew what they were talking about? It is really just a matter of using your common sense, your good judgment and your experience.

First of all, consider how good an opportunity the witness had to observe or hear what he or she testified about. The witness may be honest, but mistaken. How did the witness' testimony impress you? Did the witness appear to be testifying honestly, candidly? Were the witness' answers direct or evasive? Consider the witness' demeanor, his or her manner of testifying. Consider the strength and accuracy of the witness' recollection. Consider whether any outside factors may have affected witness' ability to perceive events. Consider the substance of the testimony. Decide whether or not a witness was straightforward or whether he or she attempted to conceal anything. How does the witness' testimony compare with other proof in the case? Is it corroborated or is it contradicted by other evidence?

\* \* \*

In other words, what you must try to do in deciding credibility is to size a person up in light of his or her demeanor, the explanations given and in light of all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward and accurate in his or her recollection. In deciding the question of credibility, remember that you should use your common sense, your good judgment, and your experience.

It is for you, the jury, and for you alone, not the lawyers, not any of the witnesses, and not me as the judge, to decide the credibility of witnesses who appeared here and the weight which their testimony deserves.

**AUTHORITIES**

*United States v. Szur*, S5 97-CR-108 (JGK) at Tr. 7794-96.

ACCEPTED \_\_\_\_\_

REJECTED \_\_\_\_\_

MODIFIED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

Dated: June 6, 2005

Respectfully submitted,

/s/ Linda Moreno

LINDA MORENO, ESQ.

1718 E. 7<sup>th</sup> Avenue

Suite 201

Tampa, Florida 33605

Telephone: (813) 247-4500

Telecopier: (813) 247-4551

Florida Bar No: 112283

WILLIAM B. MOFFITT, ESQ.

(VSB #14877)

Cozen O'Connor

1667 K Street, NW

Washington, D.C. 20006

Telephone: (202) 912-4800

Telecopier: (202) 912-4835

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of June, 2005, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and by U.S. Mail to Stephen N. Bernstein, P.O. Box 1642, Gainesville, Florida 32602, counsel for Sameeh Hammoudeh.

/s/ Linda Moreno  
Linda Moreno  
Attorney for Sami Al-Arian